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Remarks:

Regarding the claims:

No amendments are entered to the claims.

Regarding the rejection of claims 1-8, and 11-12 under 35 USC 102(b) in view of WO 01/76371 (hereinafter referred to as WO '371):

Prior to discussing the relative merits of the Examiner's rejection, Applicants point out that unpatentability based on "anticipation" type rejection under 35 USC 102 requires that the invention is not in fact new. See *Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 66 F.3d 299, 302, 36 USPQ2d 1101, 1103 (Fed. Cir. 1995) ("lack of novelty (often called 'anticipation') requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee"). Anticipation requires that a *single reference* [emphasis added] describe the claimed invention with sufficient precision and detail to establish that the subject matter existed in the prior art. See, *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990).

The principle of "inherency," in the law of anticipation, requires that any information missing from the reference would nonetheless be known to be present in the subject matter of the reference, when viewed by persons experienced in the field of the invention. However, "anticipation by inherent disclosure is appropriate only when the reference discloses prior art that must necessarily include the unstated limitation, [or the reference] cannot inherently anticipate the claims." *Transclean Corp. v. Bridgewood Servs., Inc.*, 290 F.3d 1364, 1373 [62 USPQ2d 1865] (Fed. Cir. 2002); *Hitzeman v. Rutter*, 243 F.3d 1345, 1355 [58 USPQ2d 1161] (Fed. Cir. 2001) ("consistent with the law of anticipation, an inherent property must necessarily be present in the invention described by the count, and it must be so recognized by persons of ordinary skill in the art"); *In re Robertson*,

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169 F.3d 743, 745 [49 USPQ2d 1949] (Fed. Cir. 1999) (that a feature in the prior art reference "could" operate as claimed does not establish inherency).

Thus, when a claim limitation is not explicitly set forth in a reference, evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." *Continental Can Co.*, 948 F.2d at 1268. It is not sufficient if a material element or limitation is "merely probably or possibly present" in the prior art. *Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1295 [63 USPQ2d 1597] (Fed. Cir. 2002). See also, *W.L. Gore v. Garlock, Inc.*, 721 F.2d at 1554 (Fed. Cir. 1983) (anticipation "cannot be predicated on mere conjecture respecting the characteristics of products that might result from the practice of processes disclosed in references"); *In re Oelrich*, 666 F.2d 578, 581 [212 USPQ 323] (CCPA 1982) (to anticipate, the asserted inherent function must be present in the prior art).

With respect now to claims 1-8, and 11-12, the applicant traverses the Examiner's rejection of these claims.

First, the applicant notes that from the Examiner's comments at pages 6 - 7 of the present Office Action that no rejection or objection to "citrus oil" has been lodged by the Examiner. Thus it is understood that the subject matter of the claims wherein the essential oil is "citrus oil" should be considered as free of the prior art, and as such, allowable.

Second, the applicant objects to the Examiner's assertion that "citronella oil" is equivalent to "oil of lemon grass", as noted in the last paragraph at page 6 of the Office Action. Simply stated, it is not true. As indicated by commercial suppliers, the chemical compounds in these materials are largely dissimilar. The main chemical components of "Citronella oil" are geraniol, citronellal, and various further alcohols and aldehydes. It is cited as having rose like odor, and bitter taste. (See:

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http://www.jkcolors.com/Citronella_Oil.htm; see also copy enclosed) The main chemical components of "oil of lemon grass" are: citral, farnesol, nerol, citronellal and myrcene. It is cited to have a leemony, sweet smell and is dark yellow to amber and reddish in color. It is watery in viscosity. Lemongrass oil blends well with: Basil, Cedarwood, Coriander, Geranium, Jasmine, Lavender and Tea Tree. (See:

http://www.jkcolors.com/Lemongrass_Oil.htm; see also copy enclosed) As is clearly evident therefrom, these two oils are not considered equivalent in the art. These two oils have different constituents, and having different physical properties indicating that they are not equivalent to one another. Thus the Examiner's assertion that "citronella oil" is equivalent to "oil of lemon grass" is believed to be incorrect. As such, the Examiner's assertion that the WO'371 document is similarly incorrect as that documents disclosure of "citronella oil" does not anticipate applicant's use of "oil of lemon grass" which can be differentiated due to its different chemical composition as further manifested by its different physical properties.

In view of the foregoing, the applicant believes that the Examiner's rejection of the claim in view of the WO'371 reference is incorrect and should be withdrawn.

Regarding the provisional "double patenting" rejection of claims 1-8, and claims 11-12 in view of copending application US Serial No. 10/597448:

Applicants respectfully traverse the Examiner's "double patenting" rejection of the foregoing claims in view of copending U.S. Application No. 10/597448 (hereinafter "the copending 448 application") which is commonly assigned with the present application. Applicants point out that to date, no claims in the instant application or the 448 application have been cited as being allowable. As such it is thus believed that the Examiner's issuance of a "double patenting" rejection is improper as being premature. Applicants believe that entry of a Terminal Disclaimer at this point in time is premature, as the scope of allowable claims in the present application have not yet been established agreeing to the limitation of the term and scope of protection may be prejudicial to the

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rights of the applicant, e.g., wherein narrowed claims of the present application may be indicated as allowable and such claims might no longer give basis to a "double patenting" rejection. However, upon the indication of allowable subject matter, the Examiner is invited to reinstate the instant rejection, if appropriate, at such later time.

Regarding the provisional "double patenting" rejection of claims 1-8, and claims 11-12 in view of copending application US Serial No. 10/597463:

Applicants respectfully traverse the Examiner's "double patenting" rejection of the foregoing claims in view of copending U.S. Application No. 10/597463 (hereinafter "the copending 4638 application") which is commonly assigned with the present application. Applicants point out that to date, no claims in the instant application or the 463 application have been cited as being allowable. As such it is thus believed that the Examiner's issuance of a "double patenting" rejection is improper as being premature. Applicants believe that entry of a Terminal Disclaimer at this point in time is premature, as the scope of allowable claims in the present application have not yet been established agreeing to the limitation of the term and scope of protection may be prejudicial to the rights of the applicant, e.g., wherein narrowed claims of the present application may be indicated as allowable and such claims might no longer give basis to a "double patenting" rejection. However, upon the indication of allowable subject matter, the Examiner is invited to reinstate the instant rejection, if appropriate, at such later time.

Should the Examiner in charge of this application believe that telephonic communication with the undersigned would meaningfully advance the prosecution of this application, they are invited to call the undersigned at their earliest convenience.

The early issuance of a *Notice of Allowability* is solicited.

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PETITION FOR A ONE-MONTH EXTENSION OF TIME

Applicants respectfully petition for a one-month extension of time in order to permit for the timely entry of this response. The Commissioner is hereby authorized to charge the fee to Deposit Account No. 14-1263 with respect to this petition.

CONDITIONAL AUTHORIZATION FOR FEES

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, including any extension of time fees, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

Respectfully Submitted;

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Enclosures: printout of http://www.jkcolors.com/Citronella_Oil.htm
printout of http://www.jkcolors.com/Lemongrass_Oil.htm

02, Feb. 2010

Date:

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Andrew N. Parfomak

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Natural Oils»»

Citronella Oil

There are two types of citronella oil. Oil derived from *Cymbopogon interitus* is known as 'Java type' and that from *Cymbopogon nardus* as 'Ceylon' type. Both are used to make cheap, 'lemony' perfumes for such things as toilet soap, household cleaners and aerosols designed to mask unpleasant smells. The Java-type oil is much richer in two chemical isolates - geraniol and citronella. Both these chemicals have a different use in the perfumery industry as part of more expensive and delicate perfumes, especially lily of the valley fragrances.

Citronella Oil Java

Citronella Oil Java type is the volatile oil obtained by Hydrodistillation of *Cymbopogon winterianus* Jowitt. The therapeutic properties of Citronella oil include antiseptic, deodorant, insecticide, parasitic, tonic and stimulant. Citronella oil's most useful quality is that of insect repellent.

Chemical Composition

Geraniol & Citronellal & various alcohol, and aldehydes. Citronella java type 85/35 oil contains a maximum of 85% Geraniol & Citronellal & various alcohol, and a minimum of 35% aldehydes, calculated as Citronellal.

Properties

It has a rose like odor and bitter taste. The oil does not contain the camphene-borneol notes characteristic of the ceylon citronella oil. The citronella oil java type is virtually colorless to pale yellow. The Oil's odor is fresh and sweet, this reveals the high content of Citronellal, Citronellal and Geraniol. One type of labeling for Citronella Oil Java Type is expressed in total Geraniol and Citronellal, e.g. 85/35, which means that this oil contains a maximum of 85% Geraniol & Citronellal & various alcohol, and a minimum of 35% aldehydes, calculated as Citronellal. Good oil should contain at least 35 % Citronellal and it may contain up to 85% total geraniol.

Application & Usage

1. Citronella has been used for over 50 years as an insect repellent and as an animal repellent. It is found in many familiar insect repellent products: candles, lotions, gels, sprays and toilette wipes for use on clothing and people.
2. Citronella oil is a raw material for production of geraniol, citronellal, hydroxy-citronellal and other similar high value perfumery bases.
3. It is also widely used as a starting material for various automatic chemicals used in scented soaps, sprays, deodorants, detergents, polishes, mosquito repellants etc.
4. Innovative retailers have even created wristbands, personal wipes, and sun-block spray.
5. Pet animal's toiletries

Consumer Industries

Mosquito repellent manufacturers coil or sticks. High value perfumery bases disinfectants like phenyl etc. mosquito repellent in public places. Household pets sprays, collars, tags etc.

Lemongrass Oil

Lemongrass essential oil is extracted from *Cymbopogon flexuous* (a.k.a. *Andropogon flexuous*, *Andropogon flexuosus*, *Cymbopogon flexuosus* - East Indian, Cochin, British India or native lemongrass) from the Poaceae family.

Chemical Constituents

The main chemical components of Lemongrass oil are: Citral, Farnesol, Nerol, Citronellal and Myrcene. *Andropogon flexuosus* and *Cymbopogon flexuous* has far higher Citral content than that of *cymbopogon citratus*.

Properties

Lemongrass oil has a lemony, sweet smell and is dark yellow to amber and reddish in color. It is watery in viscosity. Lemongrass oil blends well with: Basil, Cedarwood, Coriander, Geranium, Jasmine, Lavender and Tea Tree.

Application & Usage

1. It is a valuable ingredient in perfumes and citrus-type soaps and is also an insect deterrent.
2. The therapeutic properties of lemongrass oil include Analgesic, Anti-depressant, Antiseptic, Astringent, Carminative, Deodorant, Diuretic, Fungicidal, Galactagogue, Insecticide and Tonic.
3. Most vegetarian capsules of Vitamin A are made of this oil.
4. In Australia and India, it is mainly used as an ingredient in Dishwashing Liquids and Bathing Soaps.
5. Lemon grass oil is one of the major essential oil used in the perfumery and cosmetic industry. It is widely used in scented soaps, sprays, deodorants, polishes, medicines etc
6. It helps to reduce tension it can be useful for stress related sexual problems, and could explain its reputation as an aphrodisiac.
7. Also this oil reduces puffiness in skin and is good hair tonic.

Consumer Industries

Manufacturers of bathing soaps and shampoos, vegetarian vitamin A capsules, insect repellent, pest repellent in the agricultural field, beverages, flavors, high value base perfumery deodorants, scents, sprays, polishes, hair tonics, muscle toning lotions, balms, dish washing liquid and cloth washing soaps.